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In The
SUPREME COURT OF THE UNITED STATES
October Term - 1965

No. ___

John V. Holmes, et al, Petitioners
vs.
Jay Eddy, et al, Respondents — No. 9511

John V. Holmes, et al, Petitioners
vs.
United States of America, et al, Respondents — No. 9543

- - - -

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

- - - -

Petitioners pray that a Writ of Certiorari issue to review the consolidated decision of the United States Court of Appeals for the Fourth Circuit entered in the above entitled civil causes on January 18, 1965.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit, printed in the Appendix A hereto, pp. 1a-9a, is reported at 341 F 2d 477, affirming per curiam the district court opinions below cited.

The opinion of the district court in Holmes, et al vs. Eddy, et al, is printed in the No. 9511-CA 4, in appellants appendix at pp. 7-12 and is reported at Section 91,277 of CCH Fed. Sec. Law Reports. The opinion of the district court in Holmes, et al vs. United States, et al, printed in the No. 9543-CA 4 appellants appendix at pp. 34-37, is reported at CCH Fed. Sec. Law Reports Sec. 91,346.

JURISDICTION

The decision of the Court of Appeals for the Fourth Circuit was entered on January 18, 1965 and the Order of the Fourth Circuit denying Petition for Re-Hearing was entered on April 5, 1965.

On July 8, 1965, an Order was entered in the Supreme Court of the United States, signed by Associate Justice Arthur J. Goldberg of the Supreme Court, extending the time for petitioners to file for writ of certiorari to and including August 1, 1965.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether Securities and Exchange Commission agents are "expressly authorized by the Securities Exchange Acts" (opinion 9543, CA 4 appendix pp. 36) to violate their own rules governing their own conduct. (Rules 122 ('33 Act); 0-4 ('34 Act) and Rule 26(c), SEC Rules of Practice (since superseded)). (See Appendix hereto B, for rules and CFR).

2. Whether SEC agents "official duties" (CA opinion appendix B, pp. 8-9) includes operational level concoction of fake or hoax photos (No. 9543 appendix pp. 23-25) and their unlawful disclosure in violation of SEC rules is "expressly authorized by the Securities and Exchange Acts" as found and affirmed,

3. Whether SEC agents "official duties" include violation of their rules in making unlawful disclosures and allegations to private attorneys thereby precipitating private lawsuits, causing great loss (No. 9543, appendix, complaint at pp. 4-6, affidavit pp. 18-19) and if such is expressly "authorized by the Securities and Exchange Acts" as found.

4. Whether SEC agents "official duties" "expressly authorized" include the widespread rule violations set forth in No. 9543, appendix, complaint at pp. 14-15, and affidavit at pp. 21-29, said rule violations by SEC agents being admitted by the SEC respondents.

5. Whether, in a summary judgment action, the courts properly decided a material fact controversy (showing of the confidential auto and tire plans in 1961-62, or non-showing) by adopting the SEC view as against the petitioners affidavits, No. 9543 appendix, complaint pp. 5-9, affidavit, pp. 19-20.

6. Whether the district court and the Court of Appeals properly extended the Barr vs. Matteo, 360 U.S. 564, and NY Times vs. Sullivan, 376 U.S. 254, doctrines to grant absolute immunity to operational level SEC agents and private parties in malicious meddling and admitted violations of SEC rules, as well as the violations of the groundless untruth prohibitions of the 33 and 34 Securities Acts.

7. Whether the courts below properly extended and broadened the operational level, as distinguished from discretionary level immunities of the Federal Tort Claims Act in excepting the U.S. from suit in 9543 on various torts and reckless or worse conduct not previously excepted.

8. Whether in a summary action the courts can properly ignore the specifics of 95% of a complaint and lengthy affidavit, deliver a generalized opinion that gives little inkling of what was actually before the courts (No. 9543, Holmes, et al vs. U.S., et al). Further, furnishing little guidance of what issues were decided by the courts, and leaving little proper basis for guidance for res judicata in later cases, i.e. Holmes, vs. U.S., 231 F.Supp. 971, appeal pending No. 22092, CA 5, Holmes vs. Cary, 234 F.Supp. 23, appeal pending No. 22098, CA 5, and other cases pending in the 10th and D.C. Circuits brought by both the petitioners and the Securities and Exchange Commission.

STATUTES INVOLVED

The Statutory provisions involved are the Federal Tort Claims Act (28 U.S.C. 2674); SEC Rules at 17 CFR 230.122, 17 CFR 240.0-4, and 17 CFR 201.26(c) (since superseded), and, in relation to the Eddy case, the Securities Act of 1933, Sec. 17 and Securities Exchange Act, Rule 10(b)(5).

REASONS FOR GRANTING THE WRIT

In addition to the questions presented above, both cases, but particularly the later, involve the question of whether investigations by civil agencies are to be conducted in the discreet and businesslike methods of the FBI and Secret Service, or will investigations degenerate in commercial and personal "wrecking" operation, whereby "washerwoman" activities, "reckless or worse" cause needless personal and commercial ruination. Are the Securities Exchange Commission rules binding or may they be flaunted with impunity by the over-eager members of the staff?

The district court opinion in Holmes vs. U.S. did uphold the validity of the rules in stating:

"S.E.C. regulations forbid agents and employees to disclose or divulge the contents of information or documents obtained by them in the course of an investigation unless and until it becomes a matter of public record or the Commission authorizes the disclosure." 9th Cir. appendix, pp. 36.

As the petitioners affidavit made clear, quoting SEC agents testimony, no disclosures had been authorized by the Commission.

But, three paragraphs later the same court did find that

"...nothing was done by the (SEC) defendants that is not expressly authorized by the Securities and Exchange Acts."

Thus, while the SEC defended on the grounds they were simply immune from restraint, and by their own quoted words had not authorized the admitted violations, the court found the violations were "authorized".

Thus, the question posed is whether the SEC is correct in defending on the grounds of immunity, admitting unauthorized acts, or the court correct in "authorizing" the violations SEC did not authorize.

The anti-disclosure rules of the SEC have been repeatedly upheld in various proceedings, holding the rules valid, including In re Timberg, CA-6, 1955, 226 F 2d 501.

The respondents contend their unlawful concoction and disclosure of the fake hoax photo was their "duty", whereas petitioners claim citizens should be protected from governmental fake photo hoaxes manufactured at government expense.

The Barr-Sullivan doctrines are extended herein far beyond previous limits; all-level governmental privilege and private privilege, with the previous malice rules thrown to the winds.

The present rulings appear to have gone far beyond present Supreme Court rulings, see New York Times vs. Sullivan - The Scope of A Privilege, Va. Law Review Jan. 1965, wherein it was said:

"It must be emphasized that Sullivan sets a strict constitutional test of malice sufficient to overcome the privilege, namely, "knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. at 279-80. (pg. 114).

and, further,

"Also, since plaintiff corporation was not a public official, application of the Sullivan privilege is certainly not mandated by the holding of the Supreme Court." (pg. 112).

The cases herein extend the publication privilege to operational level persons having no discretionary publication duties, and to private parties.

Herein Commission respondents admit violation of their own rules, more serious than the "reckless or worse" standards of Kelley vs. Dunne, 344 F 2d 129-135 (1965) which case stands on all fours in opposition to the doctrines below.

Petitioners believe the decisions below are in conflict with many Supreme Court rulings protecting citizens from arbitrary governmental actions, as set forth in the printed record from below, including Larson vs. Domestic etc, 337 U.S. 682 at 695

actions "...conflict with the terms of his (governmental officers) valid statutory authority".

Reference below to Jones vs. Kennedy, 121 F 2d 40, cert. den. seems inapplicable as nowhere have the petitioners sought to restrain the Commission from carrying out a lawful investigation, issuing valid press releases, or the forwarding of information to authorities, as did the Jones case.
Petitioners have attempted to adhere to a brief petition; attention is called to their full position in the printed record for the Fourth Circuit.

CONCLUSION

As this is the first of the many Hydramotive automobile cases to reach the Supreme Court from the four circuits where proceedings are going forward the past six since 1961 petitioners seek consideration of their cause and tender apologies for their inexperience and training lack at law.

Respectfully submitted,

John V. Holmes, pro se
Durward E. Willis, pro se
Solo Tire Company
Hydramotive Corporation
Hydramotive Manufacturing Corp.
Hydramotive Engineering Corp.
American Uranium Company
Science Investors, Inc.
Data Electronics, Inc.
Hydramotive Financial Corp.
Willis Acceptance Corporation

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Love Valley
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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9511

John V. Holmes, et al, appellants,
vs.
Jay Eddy, et al, appellees.

No. 9543

John V. Holmes, et al, appellants
vs.
United States of America, et al, appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, AT CHARLOTTE.
J. B. CRAVEN, Jr., DISTRICT JUDGE.

(Argued October 8, 1964 - Decided January 18, 1965).

Before SOBELOFF, Chief Judge, BRYAN, Circuit Judge, and GORDON, District Judge.

PER CURIAM:

As both of these cases, i.e. Nos. 9511 and 9543, arose from substantially the same facts, and were argued at the same time before the Court, the cases are consolidated for decision by the Court.

The plaintiffs named in both of the subject actions were engaged either directly or indirectly in the development of an automobile and tire. In order to promote their endeavors, the plaintiffs sought to market stock. The Securities and Exchange Commission (hereinafter referred to as S.E.C. or Commission) in September, 1961, authorized its staff to conduct an investigation to determine whether the plaintiffs herein and others were violating the registration and anti-fraud provisions of the Federal Securities laws in the sale of the stock. During the course of this investigation, Jay Eddy, a stock broker in the employ of Harris, Upham & Company, voluntarily informed the

Commission that he had received a letter from Hydramotive Corporation through the mails and that he felt the Company's venture might "bilk the public". Specifically, in this respect, Jay Eddy mailed to the S.E.C. the letter received by him from Hydramotive Corporation and prior to mailing the letter he wrote thereon the following: "This company looks like an attempt to bilk the public via the securities market--it has a smell similar to all such."

The Commission requested the defendant Eddy to execute an affidavit as evidence that the alleged misleading letter or literature was being sent through the mails in connection with the sale of stock. The S.E.C. thereafter on December 12, 1961, brought a suit in the United States District Court for the Western District of Oklahoma under Section 20(b) of the Securities Act of 1933, as amended, 15 U.S.C. 77t(b), and Section 21(e) of the Securities Exchange Act of 1934, against among others, John V. Holmes, Hydramotive Manufacturing Corporation, Hydramotive Corporation and Durward E. Willis, being four of the plaintiffs named in the suits in this appeal, to enjoin defendants from future sales of unregistered stock and the use of false and misleading sales literature. The letter and affidavit from Jay Eddy, which had been kept confidential prior to the Oklahoma action, were introduced as evidence in the Oklahoma action. The United States District Court for the Western District of Oklahoma granted the relief requested by the S.E.C. and held that there had been a violation of the Federal Securities law, and accordingly, enjoined the sale of the stock. This case is now on appeal and reported at CCH Fed. Sec. L. Rep. Section 91,354(WD Okla).

After the institution of the Oklahoma action, the plaintiffs instituted the suits which are the subject of this appeal in the United States District Court for the Western District of North Carolina.

In one of the subject actions (no. 9511), plaintiffs, Hydramotive Manufacturing Corporation and John V. Holmes, in their complaint filed April 2, 1963, named as defendants the United States Securities and Exchange Commission; William Lucius Cary, Chairman of the Commission; Martin V. Miller, Thomas W. Rae, M. David Hyman, Attorneys employed by the Commission; Walter C. Johnson, Investigator with the Commission; John Doe,

an unknown official of the Commission; Harris, Upham & Co., a securities broker-dealer and Jay Eddy, an employee of Harris, Upham & Co. The complaint seeks (1) injunctive relief permanently restraining the individual defendants from "Further circulation of harmful untruth", (2) $20,000.00 in damages to plaintiff Holmes and (3) $500,000.00 in damages to the plaintiff Hydramotive Manufacturing Corporation. In essence, the allegations of the complaint allege that the defendants have conspired to circulate and have circulated publicly untruths about the plaintiff which constitute an "attractive public nuisance" with consequent damage to the plaintiffs. The District Court upon motion of the defendants granted summary judgment for the defendants.

In the other action (No. 9543), plaintiffs, John V. Holmes, Durward E. Willis, Hydramotive Manufacturing Corporation, Hydramotive Corporation and other corporations of which Holmes or Willis are officers, in their complaint filed May 24, 1963, named as defendants the United States of America; the United States Securities and Exchange Commission; William Lucius Cary, Chairman of the Commission; Manuel F. Cohen, a member of the Commission; Philip Loomis, Jr., General Counsel of the Commission; Irving M. Pollack, Associate Director of the Commission; William M. Green, Regional Administrator of the Commission, J. Cecil Penland, Assistant Administrator of the Commission; Thomas W. Rae, Martin V. Miller, Davis Bliss, M. David Hyman, John Kelly, Attorneys for the Commission, and Walter Johnson, Investigator for the Commission. The complaint seeks (1) injunctive relief permanently restraining the Securities and Exchange Commission and the individual defendants from unlawfully

(a) exceeding their authority,
(b) committing irregularities,
(c) interfering with plaintiffs business,
(d) disclosing confidential information obtained during the investigation of plaintiffs by the Securities and Exchange Commission,

and (2) damages of $22,750,000.00 from the United States of America by reason of wrongful acts of the agents, servants and employees of the Securities and Exchange Commission. The allegations of the complaint in effect state that the defendants, by and through the named individual defendants, unlawfully disclosed and

divulged confidential information that was obtained during an investigation by the Securities and Exchange Commission of the plaintiffs' business and securities practices. The District Court, on motion of the defendants, granted summary judgment for the defendants in this action also.

First, with reference to No. 9511, the plaintiffs in paragraphs 5 and 13 of their complaint allege that the acts of which the plaintiffs complain were committed by the Chairman of the S.E.C. and its employees, who are named defendants, "within the scope of their employment". A careful study of the entire record on appeal reveals nothing that was done by the defendants, except Jay Eddy and Harris, Upham & Company, other than acts wholly within the scope and course of carrying out their official duties as authorized by 15 U.S.C. 77t and 78u in carrying out the investigation of plaintiffs' business. The allegations of plaintiffs' complaint, together with other pertinent portions of the record, bring the plaintiffs' action clearly within the established principle of law that "public officers when acting within the scope of their official authority are immune from suit for damages." John v. Kennedy, DC Cir., 121 F 2d 40, 42, cert. den. 314 U.S. 665, 56 S. Ct. 654, 6 L. Ed. 536 (1941); Barr v. Matteo, 360 U.S. 564, 70 S. Ct. 1335, 3 L. Ed. 2d 1434 (1959); Gregoire v. Biddle, 2 Cir., 177 F. 2d 579, cert. den. 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363 (1950); Cooper v. O'Connor, D.C. Cir., 99 F. 2d 135, cert den. 305 U.S. 643, 59 S. Ct. 146, 83 L. Ed. 414 (1938); Ove Gustavsson Contracting Co. v. Floete, 2 Cir., 299 F. 2d 655, cert. den., 374 U.S. 827, 83 S. Ct. 1862, 10 L. Ed. 2d 1050 (1962).

In Jones v. Kennedy, supra, the plaintiff instituted suit against members of the Securities and Exchange Commission and several of its employees. As in the subject suits, the precise nature of the claims was not set out clearly by the plaintiff but suggest slander, libel, malicious prosecution and interference with the business relationship of the plaintiff by carrying out investigations, issuing press releases, forwarding information to authorities, etc. The Court, in affirming a decision dismissing the complaint, held that since the acts came within the authorized duties of the defendants the complaint failed to state a

claim upon which relief could be granted.

With reference to the Securities and Exchange Commission as a party defendant, Section 4 of the Securities Exchange Act, 15 U.S.C. 7..d, establishes the Commission as an agency of the United States, and as such government agency, the Commissio.. ma, be sued only in such manner as Congress authorizes. The complaint of the plaintiffs asks for injunctive relief as to the individual defendants only and damages as against all of the defendants, including the S.E.C. As distinguished from having its orders reviewed by the courts, Congress has not consented that the Commission be sued. The plaintiffs assert specific reliance upon the Federal Tort Claims Act to secure money damages against the S.E.C., but it is specifically provided by 2679 of Title 28 of the United States Code that a federal agency is not to be sued thereunder, and in fact the provisions of 28 U.S.C. 2000(a)(h) except the United States from liability under the Federal Tort Claims Act in an action of the type here presented. The S.E.C. cannot be sued eo nomine.

As to the defendant Eddy and/or Harris, Upham & Co., it is clear that the only acts committed by the defendant Eddy in connection with the entire transaction was to mail the letter received from Hydramotive Corporation, with the notations made by him thereon, to the Securities and Exchange Commission, and execute an affidavit to the effect that he received the letter for use by the S.E.C. as evidence in the Oklahoma action. It is not apparent that such action on the part of the defendant Eddy could amount to a defamation of the plaintiffs, in that he, the defendant Eddy as alleged in the complaint, conspired to circulate harmful falsehoods and/or created an attractive public nuisance and/or circulated harmful falsehoods, especially in view of the fact that the letter to the Commission, a federal agency under a statutory duty to protect the public from frauds through stock issues, was treated as confidential and disclosed to no one outside the Commission until the letter along with an affidavit by the defendant Eddy, were filed as evidence in the Oklahoma action. The said affidavit was furnished by request of the S.E.C.

Such being the undisputed facts, the District Court acted properly in allowing the motion of the defendant

Eddy and his employer, Harris, Upham & Co., for summary judgment, inasmuch as no genuine issue of fact existed, but in addition thereto the acts of the defendant Eddy were privileged, his statements having been made public only upon the institution of the Oklahoma action and being relevant to the issue before the Oklahoma Court. As stated in the Borg v. Boas, 9 Cir., 231 F2d 70o ('56)

"The information given to a prosecutor by a private person for the purpose of initiating a prosecution is protected by the same cloak of immunity and cannot be used as a basis for an action for defamation."

Also see Newell on Slander and Libel (2d Edition) 424, at paragraph 27 where it is stated:

"The same doctrine is generally held in the American Courts, with the qualification as to parties, counsel and witnesses, that their statements made in the course of an action be pertinent and material."

For other cases dealing with the principle of immunity in judicial proceedings, see: Jarman v. Offutt, 239 N.C. 468, 80 S.E. 2d 248 (1954); Fowle v. Fowle, 255 N.C. 720, 122 S.E. 2d 722 (1961); Godette v. Gaskill, 151 N.C. 52, 65 S.E. 612 (1909); Bailey v. McGill, 247 N.C. 286, 100 S.E. 2d 360 (1957); Baggett v. Grady, 154 N.C. 632, 70 S.E. 610 (1911); Wall v. Blalock, 245 N.C. 232, 95 S.E. 2d 450 (1956); Ramsey v. Cheek, 109 N.C. 270, 13 S.E. 775 (1891), annot. 54 AIR 2d 1298, 1302, 1305. King v. Hildebrandt, 216 F.S. 314 (S.D.N.Y.)(1963); Sock v. Stecker, 2 Cir., 60 F. 2d 73 (1932); Keeley v. Great Northern Ry. Co., 156 Wis. 181, 145 N.W. 664 (1914); Tsesmelis v. Sinston State Bank, 53 S.W. 2d 461 (Tex. Com. App. 1932); Hager v. Major, 353 Mo. 1166, 186 S.W. 2d 564('45).

In case No. 9543, the plaintiffs named include John V. Holmes and Hydramotive Corporation, both of which were plaintiffs in case 9511. The defendants in case No. 9543 are the United States of America, United States Securities and Exchange Commission, two of the Commission members and several agents and representatives of the Commission. Therefore, deleting Jay Eddy and Harris, Upham & Co. as parties defendant and adding the United States of America and five additional individual defendants representing the S.E.C., the defendants are the same in case No. 9543 as in case No. 9511. The allegations of the complaint in case No. 9543 are to

the effect that the S.E.C. through its agents and employees since approximately September, 1961, have unlawfully interfered with and disparaged the plaintiffs business by disclosing confidential information secured in the process of investigation. Specifically the plaintiffs' business by disclosing confidential information secured in the process of investigation. Specifically the plaintiffs contend that agents of the S.E.C. during the investigation secured from the plaintiffs design drawings of an automobile and tire which the plaintiffs were in the process of developing and promoting, and that the drawings were shown to competitors and others with adverse interest to the plaintiffs. The record reflects that the drawings were secured with reference to the institution of the Oklahome proceedings by the S.E.C.; that the drawings were, without objection on the part of plaintiffs, delivered to the S.E.C. in the course of discovery proceedings in the Oklahoma action; that the drawings were introduced as evidence in the Oklahoma action and no objection made to the introduction thereof and no request made for confidential treatment at the time.

The same principles of law relating to immunity of the defendants in case No. 9543 govern as in case No. 9511 and hence need no reiteration. The discernible claim of the plaintiffs in case No. 9543 is that the Commission, it(s) members and employees, in violation of the rules of the Commission damaged plaintiffs by making public information gathered by the Commission and its employees in the course of investigating plaintiffs' practices and activities in the marketing of stock.

From the complaints in the subject actions, affidavits on the part of the respective parties presented for consideration by the Court in ruling on the respective motions and argument presented, the District Court properly concluded that the drawings complained of were shown only to Commission personnel and a restricted group of engineers, not in fact adverse to plaintiffs' interest, and who by training were qualified to give an expert opinion with regard to the drawings for use in the Oklahoma action; that the drawings are now a matter of public record in the Oklahoma proceeding; that the investigating of the plaintiffs by

the S.E.C. and its agents was carried out in accordance with statutory authority, and the acts of the defendants of which the plaintiffs complain consisted wholly of acts done within the scope and course of carrying out official duties in investigating the plaintiffs' business practices and activities.

Analysis and review of the record of the District Court demonstrates that the appeal in each of the cases is without merit, and accordingly the judgment by the District Court is AFFIRMED.

Affirmed.

Securities Act of 1933

Rule 122 Nondisclosure of Information Obtained in the Course of Examinations and Investigations (17 CFR 230.122)

Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation pursuant to Section 8 (e) or 20(a) shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceeding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this rule. Any officer or employee who is served with such subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sough, and any circumstances which may bear upon the desirability of making available such information or documents.

Securities Exchange Act of 1934

Rule 0-4. Nondisclosure of Information Obtained in the Course of Examinations and Investigations. (17 CFR 240.0-4)

Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation pursuant to section 17(a) or 21(a) shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer,

or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this rule. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or document sought, and any circumstances which may bear upon the desirability of making available such information or documents.

Rules of Practice (SEC)

Rule 26. Confidential Treatment of Certain Matters. (Rescinded April 1, 1964) (17 CFR 201.26(c)

(c) Information obtained in investigations. Information or documents obtained by the Commission in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documements called for, basing his refusal upon this rule. Any officer or employee who is served with such subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought

and any circumstances which may bear upon the [illegible] of desirability of making available such information or documents.